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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,486	11/07/2000	Jack D. Pippin	238664US 25 DIV	9610

7590 10/30/2008
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EXAMINER

FREJD, RUSSELL WARREN

ART UNIT	PAPER NUMBER
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2128

MAIL DATE	DELIVERY MODE
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10/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/707,486	PIPPIN, JACK D.	
	Examiner	Art Unit	
	Russell Frejd	2128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 7-19, 22-24, 26-30 and 32-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-19, 22-24, 26-30 and 32-40 is/are allowed.
- 6) ☒ Claim(s) 1, 7, 8, 10 and 11 is/are rejected.
- 7) ☒ Claim(s) 2-4, 9 and 12-15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8.6.08</u> . | 6) <input type="checkbox"/> Other: _____ |

Examination of Application #09/707,486

1. Claims 1-4, 7-19, 22-24, 26-30, and 32-40 are pending in the application. This communication is in response to the amendment received 6-August-2008. Claims 5, 6, 20, 21, 25, and 31 are canceled.

Double Patenting Rejections

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2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.3218 may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2.1 Claims 1, 7, 8, 10, and 11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 5, 7, and 9 of USP 7, 228,508, issued to Pippin on 5-June-2007. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present invention and the patent are each directed to an integrated circuit [see the preambles of claim 1 in the application and the '508 patent. Furthermore, the claims of the present invention, especially claims 7, 8, 10, and 11, are primarily directed to the identical claimed features of the patent. For instance, the features in application claim 1: a register, a thermal sensor, and clock adjustment logic for increasing and decreasing the clock frequency in response to a temperature threshold value, are

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disclosed in the patent in claims 1, 5, and 7. Similarly, the features in application claim 7: a fail-safe sensor and halt logic, are disclosed in patent claim 1. The features in application claims 8 (inhibit operation), 10 (a plurality of sensors and an averaging mechanism), and 11 (an interrupt handler), are disclosed in claims 2, 4, and 9 respectively of the '508 patent. For at least these reasons, one of ordinary skill would have found it obvious that the modeling of a digital processor of the present invention and the patent, are not patentably distinct in so far as the specifications of each application support the identical critical features noted above.

Claim Objections

3. Claims 2-4, 9, and 12-15 are objected to as being dependent upon a rejected base claim.

Allowed Claims

4. Claims 16-19, 22-24, 26-30, and 32-40 are deemed allowable over the prior art of record at this time, pending resolution of any rejections noted above, because the prior art does not specifically disclose the claimed clock frequency adjustment logic and circuitry.

Response Guidelines

5. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

5.1 Any response to the Examiner in regard to this non-final action should be

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directed to: Russell Frejd, telephone number (571) 272-3779, Monday-Friday from 0530 to 1400 ET, **or** the examiner's supervisor, Kamini Shah, telephone number (571) 272-2279. Inquires of a general nature or relating to the status of this application should be directed to the TC2100 Group Receptionist (571) 272-2100.

mailed to: Commissioner of Patents and Trademarks
P.O. Box 1450, Alexandria, VA 22313-1450

or faxed to: (571) 273-8300

Hand-delivered responses should be brought to the Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

Date: 26-October-2008

/Russell Frejd/
Primary Examiner AU 2128